

Message Text

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ACTION L-03

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FM AMEMBASSY QUITO

TO SECSTATE WASHDC PRIORITY 1507

INFO AMCONSUL GUAYAQUIL

C O N F I D E N T I A L QUITO 6531

E.O. 11652: GDS

TAGS: ENRG, PFOR, EC

SUBJECT: ECUADOREAN LAWS ON CADUCITY

REF: STATE 219401

1. EMBASSY IS TRANSMITTING PRELIMINARY ANSWERS TO QUESTIONS TO REFTEL REGARDING ECUADOREAN LAWS ON CADUCITY. EMBASSY WISHES TO EMPHASIZE, HOWEVER, THAT WE ARE NOT COMPETENT TO COMMENT ON THE LEGAL VALIDITY OF GULF'S CASE. FOR THIS REASON, WE ARE HIRING AN ECUADOREAN ATTORNEY EXPERIENCED IN PETROLEUM MATTERS FOR AN INDEPENDENT APPRAISAL OF GULF'S CASE.

2. WE HAVE BEEN ABLE TO DETERMINE THAT THE "CADUCITY" SANCTION IS A LONG-STANDING PROVISION UNDER ECUADOREAN LAW.

A. THE MARCH 23, 1937 "GENRAL LAW ON MINES" PROVIDED THAT MINERAL CONCESSIONS MAY BE CADUCED FOR VARIOUS REASONS (ARTICLES 165-166) INCLUDING THE FAILURE TO PAY TAXES (ARTICLE 117).

B. THE PETROLEUM LAW OF AUGUST 19, 1961, ALSO PROVIDED FOR CADUCITY OF CONCESSIONS (ARTICLE 38) "IF ENTRY RIGHTS, ROYALTIES AND TAXES ARE NOT PAID WITHIN THE PERIOD DETERMINED BY THIS LAW, THE RESPECTIVE REGULATIONS, OR CONTRACTS IN EFFECT."

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C. THE PROVISIONS RE CADUCITY IN THE 1971 HYDROCARBONS LAW

(ARTICLES 68-70) WERE RETAINED VERBATIM IN THE 1974 CODIFICATION OF THE HYDROCARBONS LAW (ALTHOUGH THE NUMBERS OF THE ARTICLES CHANGED).

3. NOTIFICATION FROM THE MINISTER OF NATURAL RESOURCES TO GULF, TO DEPOSIT OR FACE CADUCITY, CITED ARTICLE 74 (THE NOTIFICATION PROVISION), OF THE 1974 CODIFICATION OF THE 1971 HYDROCARBONS LAW. OUR UNDERSTANDING IS THAT IN A STRICTLY LEGAL SENSE IT SHOULD HAVE INSTEAD CITED ARTICLE 72 (WHICH SPECIFIES THE GROUNDS FOR CADUCITY), AND THAT IT SHOULD HAVE SPECIFIED WHICH OF THE SUB-PARAS OF ART. 72 HAD BEEN VIOLATED.

4. THE CADUCITY CLAUSE IN THE 1971 HYDROCARBONS LAW HAS BEEN APPLIED AT LEAST ONCE: THE FOREIGN (U.S. AND OTHER) FIRM MINAS Y PETROLEOS WAS CADUCED IN FEBRUARY 1973, UNDER ARTICLE 68.1 OF THE LAW, CITING NON-PAYMENT OF SURFACE TAXES. IT IS OUR UNDERSTANDING THAT THE VARIOUS COMPANIES IN THE MINAS Y PETROLEOS CONSORTIUM REFUSED TO PAY THE GOVERNMENT THE RETROACTIVE APPLICATION OF SURFACE TAXES, AMONG OTHERS, AND TO NEGOTIATE A CONTRACT AS REQUIRED BY THE 1971 HYDROCARBONS LAW. MINAS HAD ONLY A SMALL INVESTMENT IN ECUADOR.

5. THE 1971 HYDROCARBONS LAW WAS NOT CITED IN THE DECREE "NULLIFYING" (NOT CAUDICING) THE ADA CONCESSION.

6. THE EMBASSY DOES NOT FEEL QUALIFIED TO ISSUE AN OPINION ON POSSIBLE DISCRIMINATORY APPLICATION OF THE CADUCITY CLAUSE AGAINST GULF. PERHAPS OUR PROSPECTIVE LAWYER WILL BE ABLE TO MAKE A DETERMINATION ON THIS.

7. FYI: EMBOFF SPOKE TO GULF ATTORNEY GLENN LUCAS AND JIM WILCOX SEPTEMBER 9 REGARDING GULF'S LEGAL POSITION RE CADUCITY OF ITS CONTRACT. LUCAS CLAIMS THAT THE CADUCITY SANCTION OF THE HYDROCARBONS LAW IS NOT APPLICABLE TO GULF'S "DELAY" IN DEPOSITS SINCE IT HAS BEEN SUPERSEDED BY THE FOLLOWING LEGISLATION:

A) SUPREME DECREE NO. 982, NOVEMBER 21, 1975, WHICH ESTABLISHES A NEW SYSTEM FOR DEPOSITING EXPORT PROCEEDS, AND REVOKES ALL CONFLICTING DECREES.

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B) REGULATION OF THE MONETARY BOARD NO. 814, JANUARY 8, 1976, WHICH IMPLEMENTS THE ABOVE DECREE. THE PENALTY FOR NON-PAYMENT OF DEPOSITS IS A FINE OF 25,000 SUCRES A DAY AND INTEREST PAYMENTS ON THE OUTSTANDING BALANCE.

8. EMBASSY IS POUCHING TO DEPARTMENT RELEVANT LAWS AND REGULATIONS FOR REVIEW.

BLOOMFIELD

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